

COMPLIANCE BOARD OPINION 01-5

February 22, 2001

*Mary Jo Neil, President
PTA Council of Howard County*

The Open Meetings Compliance Board has considered your complaint dated November 17, 2000, concerning the Board of Education for Howard County (hereafter “County Board”), as well as the supplemental information you provided on December 26. Your complaint was filed on behalf of the Executive Committee of the PTA Council of Howard County. In essence, your complaint alleged that the County Board failed to maintain minutes in accordance with the requirements of the Open Meetings Act. The complaint also alleged that the County Board violated the Act by holding an executive session on March 23, 2000, without providing public notice as required by the Act.

Following the filing of your complaint, the Compliance Board received requests from Mr. Barry Tevelow and Mr. Allen Dyer requesting to join your complaint. Both requests were granted. The Compliance Board received a timely response to your complaint from Mark C. Blom, General Counsel to the County Board, as well as a supplemental response submitted at the invitation of the Compliance Board in light of the additional information provided.¹

We find, as acknowledged by the County Board, that its former practices regarding minutes violated the Act and that it failed to give proper public notice of the meeting cited in the complaint (albeit the meeting was actually held on a different date). The County Board has recognized the need to change its practices and has taken steps to bring itself into compliance with the Act.

¹ In your letter of December 26, you also raised two general questions concerning the Open Meetings Act. Assistant Attorney General Jack Schwartz, Counsel to the Compliance Board, addressed those issues in a letter to you dated January 5, 2001.

I**Availability and Adequacy of Minutes*****A. Acknowledged Violations***

Your complaint alleged that the County Board failed to produce minutes of its meetings in a timely fashion. The complaint also noted that some minutes had not been published or approved. The complaint further questioned whether the minutes of certain meetings were of sufficient detail to comply with requirements of the Act. For example, the complaint questioned the practice of recording that particular motions were approved by consensus.

In its response, the County Board acknowledged that “there has been an unacceptable delay in the preparation of its minutes.” For meetings held during the first half of 2000, the average delay between the date of the meeting and the date that minutes were approved was more than five months. This delay is, indeed, “unacceptable.” The County Board has since taken concrete action – the hiring of additional secretarial staff – to remedy this problem.

The County Board also noted that information in minutes of its public meetings has not always included “all the detail enumerated in §10-509(c)(2).”² However, the County Board continued, “any irregularities or violations ... which may have transpired occurred prior to July 2000.” The County Board detailed the actions that were taken as of that time to ensure compliance with the Act, including greater attention to the required elements of disclosure and release of closed session minutes to rectify the prior failure to comply with §10-509(c)(2). The Compliance Board accepts the County Board’s acknowledgment that violations have occurred and commends the County Board for the corrective actions taken. In light of the County Board’s acknowledgment, there is no need for us to evaluate each potential violation noted in your complaint. Instead, in order to provide the County Board and interested citizens guidance with in this area, we will restate the obligations of a public body regarding the production of minutes.

B. Requirements for Preparation of Minutes

A public body is required to have written minutes prepared for each meeting that is subject to the Act, regardless of whether the meeting is open to the public or closed. §10-509(b). The minutes must reflect: (1) each item that the public body considered; (2) the action that the public body took on each item; and (3) each vote that was recorded. §10-509(c)(1). “These are minimum requirements; the Open

² All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

Meetings Act is not intended to ‘limit the matters that a public body may include in its minutes.’” §10-509(a)(2); Compliance Board Opinion 94-2 (May 9, 1994), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 63, 64.

Your complaint pointed out several instances in which the County Board approved motions by consensus, suggesting that this practice violated the Act. As we have previously noted, however, the Act is “not an enemy of consensus. If a public body truly does decide a matter by consensus, the minutes can simply reflect the unanimous consent for the action.” Compliance Board Opinion No. 96-2 (March 4, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 155. Of course, the minutes must list the members attending.³ When the minutes do so, a motion noted as approved by consensus amount to a record of a favorable vote by each member present. If a member voted against a motion or abstained, the minutes must reflect this fact. “The purpose of the ‘recorded vote’ requirement ... is to ensure that members of the public who review the minutes understand who supported a particular action and who did not.” *Id.*

The minutes are to be prepared “[a]s soon as practicable.” §10-509(b). In a recent opinion, we elaborated on this standard in addressing the practices of a board of education of another county:

This standard, we have held, “permits a public body to take a reasonable amount of time to review draft minutes for accuracy and to approve the minutes.... The Act allows practical circumstances to be considered and does not impose a rigid time limit.” ... Minutes must be prepared within a reasonable time, and routine delays of several months would be unlawful, but minutes need not always be prepared by the time of the next meeting. ...

Compliance Board Opinion 01-3 (February 1, 2001), at 6 (internal citations omitted). The minutes of a public session “are public records and [are] open to public inspection during ordinary business hours.” §10-509(d).

³ See, e.g., Compliance Board Opinion 94-2 (May 9, 1994), *reprinted in 1 Official Opinions of the Maryland Open Meetings compliance Board* 63, 65 (reference to an unanimous vote to close a meeting in the minutes of the following open meeting violated the Act if the statement failed to include a listing of those persons present as required under §10-509(c)(2)(iv)).

If the public body conducts a closed meeting that is subject to the Act, the minutes must include the information enumerated above. §10-509(c)(1). The public body may also tape record the closed meeting; however, the recording is not a substitute for written minutes. §10-509(c)(3)(i). Compliance Board Opinion 99-18 (November 4, 1999), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 87, 90. The minutes and any recording are generally sealed unless the public body elects to make the information public. §10-509(c)(3)(iii) and (4).⁴ Minutes and any tape recording must be retained for at least one year. §10-509(c)(3)(ii).

Furthermore, the Act requires that certain information in connection with the closed meeting be made part of the public record immediately prior to the closed session and in the minutes of the following open meeting of the public body. Among other procedures, prior to a closed meeting, the presiding officer must prepare a written statement of the reason for closing the meeting, which must include a citation of the authority under §10-508, and a list of topics to be discussed. §10-508(d)(2)(ii). This written statement is a matter of public record. §10-508(d)(4). The minutes of the following open session must include: (1) a statement of the time, place, and purpose of the closed session; (2) a record of the vote of each member as to closing the session; (3) a citation of the authority under the Act for closing the session; and (4) a listing of the topics of discussion, persons present, and each action taken during the session. §10-509(c)(2). Although the required statement and subsequent minutes “need not disclose sensitive information that the Act permits to be discussed in closed session, the statement[s] ought to be more than ‘uninformative boilerplate.’” Office of the Attorney General, *Open Meetings Act Manual* 20 (4th ed. 2000).

II

Notice Requirements

The second issue raised in the complaint was based on minutes of a closed meeting of the County Board on March 23, 2000, at 11:15 P.M. Your complaint indicated that a notice of this meeting was never provided as required by §10-506. In its response, the County Board informed us that the minutes to which the complaint referred reflected a clerical error by the individual who then chaired the County Board. The meeting in question actually occurred on April 25, 2000 at 11:10 A.M. Apparently, when preparing the notes, she was reviewing a memorandum

⁴ The Act provides two exceptions in cases where a meeting is closed to consider the marketing of public securities or the investment of public funds. In these cases, the Act requires that the minutes and any tape recording be unsealed after the transaction is completed. §10-509(c)(4)(i) and (ii).

dated March 23 and erroneously designated the date and time of the meeting. A copy of the corrected minutes was provided to the Compliance Board.

The County Board acknowledged that it failed to give required notice before this meeting. Although its lapse was not explained, the County Board's response indicated that it has received training about the Act, including its notice obligations.

III

Conclusion

As the County Board acknowledged, it violated the Act by failing to prepare minutes properly and, in at least one instance, by failing to give notice of a meeting. The County Board also assured us that corrective actions have been taken. We accept the County Board's representation and hope that the reforms it has implemented have eliminated the compliance problems identified in your complaint.

OPEN MEETINGS COMPLIANCE BOARD*

Courtney McKeldin
Tyler G. Webb

*Chairman Walter Sondheim, Jr. did not participate in the preparation or approval of this opinion.